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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,903	09/10/2003	Seth Bayer	Bayer	3597

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Ruth Eure  
4795 Edison Avenue  
Boulder, CO 80301

EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/658,903

Applicant(s)

BAYER, SETH

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The following informalities in the claims are noted: (A) in claim 3, on line 1, "flush control arm" should be changed to read --float arm device--; and (B) in claim 4, on line 1, "rod" should be changed to read --arm device--. Appropriate correction is required.

### *Claim Objections*

2. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 recites the same limitation found in part (d) of claim 5.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 3 contains terms lacking proper antecedent basis. The claim recites the limitations "the first end" in lines 2, 4 and 6, and "the second end" in line 4. There is insufficient antecedent basis for these limitations in the claim. Since claim 1 calls for both the flush control arm and the float rod to have a first end and a second end, the terminology as used in claim 3 makes it unclear as to which first end and second end is being referred to.
6. Claim 3 is indefinite since it is unclear as to what is intended by "a secondary pivot axis shaft" since no primary pivot axis shaft has been recited.

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7. Claim 4 is indefinite since it is unclear as to how the first end and second end structurally relate to that recited in claim 1.

*Claim Rejections - 35 USC § 102*

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hooshley et al. Hooshley et al. disclose a float arm device having all the claimed features including a mounting block (constituted by mounting plate 20), a flush control arm 108 having a first end and a second end (note Fig. 1), the flush control arm 108 being mounted to the mounting block 20 near the first end of the flush control arm 108 (note Fig. 1), and a float rod (constituted by float arm 90) having a first end and a second end (note Fig. 1), the float rod 90 being mounted to the mounting block 20 near the first end of the float rod 90 (note Fig. 1) at a predetermined distance from the mounting of the first end of the flush control arm 108 (note Figs. 6-10). With respect to claims 2 and 7, Hooshley et al. also disclose that the flush control arm 108 comprises two essentially parallel sides (note Fig. 1). With respect to claims 3, 8 and 13, Hooshley et al. further disclose that the flush control arm 108 has an opening (constituted by bushing 110) at a predetermined distance from its first end for receiving a pivot axis shaft (constituted by pivot rod 104) and a channel (constituted by one of the notches 132) near its second end for receiving the end of the link 133 (note Fig. 6), and the flush control arm 108 having a lobe (formed by the end around rod 104) near its first end (note Fig. 7). With regard to claims 4 and 9, Hooshley et al. additionally disclose that the float rod 90 has an opening (constituted by bushing 88) at its first end for receiving a pivot axis shaft 24 and a shelf and catch (formed by float 95 and its attachment to the float rod 90) at its second end (note Fig. 5). With regard to claim 5, Hooshley et al. also disclose

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a water saving toilet (note lines 11-24 in col. 1) and the capability of evacuating two specific volumes of water (note lines 5-14 in col. 1). With regard to claim 6, Hooshley et al. further disclose that the device can be installed in existing toilets (note lines 5-8 in col. 1). With respect to claim 8, Hooshley et al. additionally disclose that the parallel sides of the flush control arm 108 are essentially identical (note Figs. 2 and 3). With respect to claims 11 and 14, Hooshley et al. further disclose a handle 44 and a cam 66 for engaging the lobe on the flush control arm 108 so that clockwise rotation of the handle 44 causes counter clockwise rotation of the flush control arm 108 (note Figs. 7 and 8, and lines 10-15 in col. 5). With regard to claims 12 and 15, Hooshley et al. also disclose a handle 44 so that counter clockwise rotation of the handle 44 causes counter clockwise rotation of the float rod 90 (note Figs. 7 and 10, and lines 49-58 in col. 5).

### *Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooshley et al. in view of Kloner. Hooshley et al. further disclose the method of saving water (note lines 11-24 in col. 1). Hooshley et al. also disclose selecting low or short flush volume by rotating the handle 44 clockwise (note lines 10-11 in col. 5) and selecting high or long flush volume by rotating the handle 44 counter clockwise (note lines 49-50 in col. 5). Although Hooshley et al. fail to disclose selecting low or short flush volume by rotating the handle counter clockwise and selecting high or long flush volume by rotating the handle clockwise, attention is directed to Kloner who discloses another water saving toilet wherein the user selects a full or

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high volume or a lesser or low volume (note lines 28-34 in col. 1) wherein rotating the handle clockwise selectively actuates one of the levers, for example, the high or maxi-flush and counter clockwise rotation selectively actuates the low or mini-flush (note lines 15-22 in col. 2). It would have been obvious to one of ordinary skill in the water saving toilet art, at the time the invention was made, to rotate the handle clockwise to selectively actuate one of the levers, for example, the high or maxi-flush and rotate the handle counter clockwise to selectively actuate the low or mini-flush of Hooshley et al. in view of the teachings of Kloner in order to make the low or mini-flush flushing mode more natural and easier for both men and women to use since they would naturally use the low or mini-flush more often than the high or maxi-flush.

### *Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. In mid to late November, 2004, the examiner's office will move to the new complex in Alexandria, Virginia. Upon moving to the new complex, the examiner's new telephone number will be 571-272-4894.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

September 30, 2004



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